International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 118, AFL–CIO *and* Franklin D. Chiado, a sole proprietorship, d/b/a Valley Industrial Machine Erectors and United Brotherhood of Carpenters and Joiners of America, Millwrights and Machine Erectors, Local No. 1827, AFL–CIO. Case 32–CD–70

10 April 1984

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

The charge in this Section 10(k) proceeding was filed on 4 November 1983 and an amended charge was filed on 22 November 1983 by the Employer, alleging that the Respondent, Iron Workers Local 118 (Iron Workers), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Carpenters Local 1827 (Millwrights). The hearing was held 19 December 1983 before Hearing Officer Barbara Luna.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, Franklin D. Chiado, a sole proprietorship d/b/a Valley Industrial Machine Erectors, is engaged in the installation of mechanical equipment and contracted with Nielson, Vasko & Earl (Nielson) to perform the disputed work. Nielson, a California corporation, is a construction contractor with its principal office in Reno, Nevada, where it annually purchases and receives goods and materials valued in excess of $50,000 directly from suppliers located outside the State of Nevada. The parties stipulate, and we find, that Nielson is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Iron Workers and Millwrights are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

Nielson awarded the Employer three subcontracts for the installation of hangar doors and a 4-ton bridge crane at the helicopter hangar at the Stead Aviation Support Facility in Reno, Nevada. The Employer thereupon entered into a collective-bargaining agreement with Millwrights. Three millwrights and the Employer performed the work in question, beginning on 24 October 1983 and ending on 16 November 1983 except for some final adjustments.

On 1 November 1983 Iron Workers Business Agent Richard Ciesynski confronted Nielson Construction Superintendent Bill Riales and stated that they had a problem because millwrights were installing the hangar doors and bridge crane. Claiming that millwrights had never installed such hangars door, whereas ironworkers had, Ciesynski said that if the Employer and his millwrights were not off the job by 3:30 that afternoon, the following day would be a different story. Riales responded that the Employer had a contract to perform the disputed work and that Nielson could not prevent him from performing the work. For the next 5 working days, approximately six to eight ironworkers picketed the jobsite. The employer continued to perform the work and the picketing ceased after 8 November 1983.

B. *Work in Dispute*

The disputed work involves the layout, assembly, and rigging of hangar doors and the installation of a 4-ton bridge crane.

C. *Contentions of the Parties*

The Employer contends that the disputed work should be awarded to employees represented by the Millwrights because they are more qualified to perform the precision aspects of the installation and because it is more efficient and economical to award the work in that manner.

Millwrights contends that employees it represents should be assigned the work because its members are more skilled in installing mechanical equipment.

Iron Workers did not participate in the proceedings but has clearly taken the position by picketing that employees it represents should be assigned the work.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that: (1) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated; and (2) the parties have not agreed upon a method for the voluntary adjustment of the dispute. We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred based

on Iron Workers' 5 days of picketing at Employer's jobsite directed at obtaining the disputed work. Further the record contains no evidence that an agreed-upon method exists for the voluntary adjustment of the dispute. Accordingly, we find that the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Collective-bargaining agreement

Upon receiving the contract to perform the disputed work the Employer entered into a collective-bargaining agreement with Millwrights which covers that work. Thus Appendix B, paragraph (p) of the Millwrights' contract defines its work to include among other things:

> . . . the hoisting, rigging . . . moving . . . aligning, erecting, assembling . . . and adjusting of all machinery and equipment installed . . . in buildings . . . [or] structures.

The Employer has no collective-bargaining agreement with Iron Workers. Accordingly this factor favors assignment to employees represented by the Millwrights.

2. Employer preference and past practice

Employer has no past practice regarding assignment of the disputed work. Its clear preference, based on economy and efficiency, as discussed below, supports awarding the work to employees represented by the Millwrights.

3. Area and industry practice

Although iron workers and millwrights both have installed similar equipment, there is no established area practice of consistently awarding that work to one group or the other.

4. Relative skills

The Employer and Millwrights' Business Agent Dana Wiggins testified that both crafts were equally skilled in most of the installation tasks but that millwrights were more skilled in installing and rigging the line shafts and cable pulley systems needed to operate the hangar doors. Accordingly this factor supports awarding the work to employees represented by the Millwrights.

5. Economy and efficiency of operations

The Employer testified that assignment to employees represented by the Millwrights was more economical and efficient for three reasons. First, the Employer was able to perform the work with four millwrights. In a grievance filed with Nielson seeking the disputed work, Iron Workers claimed that six of its members were entitled to the work being performed by the four millwrights. The Employer further testified that use of millwrights was more economical because the Employer would have to supply ironworkers with tools, whereas millwrights provided their own tools. Finally, the Employer testified that even if it assigned the work to ironworkers, he would nonetheless have to employ millwrights to install the line shaft for the rigging.

Accordingly it appears that this factor strongly favors assignment to employees represented by the Millwrights.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Millwrights are entitled to perform the work in dispute. We reach this conclusion relying on the collective-bargaining agreement between Employer and Millwrights, Employer preference, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by Millwrights, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Valley Industrial Machine Erectors represented by United Brotherhood of Carpenters and Joiners of America, Millwrights and Machine Erectors, Local No. 1827, AFL-CIO, are entitled to perform the installation of hangar doors and the 4-ton bridge crane at the Stead Aviation Support Facility, Reno, Nevada.

2. International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 118, AFL-CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Valley Industrial Machine Erectors to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 118, AFL–CIO, shall notify the Regional Director for Region 32 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.